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No. 85-795

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

RICHARD D. BENNETT and CAROLE A. BENNETT,

Petitioners,

v.

UNITED STATES TRUST COMPANY OF NEW YORK,

Respondent.

REPLY BRIEF FOR PETITIONERS

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REPLY BRIEF FOR PETITIONERS

The petitioners (the "Bennetts") submit this reply brief for the limited purpose of responding to certain points raised in the brief of the respondent ("U.S. Trust") in opposition to the Bennetts' certiorari petition, and to emphasize to the Court that this case presents at least two issues on which there is a conflict between the Circuits.

First, with respect to the RICO issue—whether a defendant can be both the "person" and the "enterprise"—U.S. Trust admits there is a conflict among the Circuits. (Resp. Br. at 7) The Bennetts' petition for a writ of certiorari should be granted, to resolve this conflict because it involves an important issue concerning the construction of RICO's civil remedy provisions.

Second, with respect to the §10(b) issue, U.S. Trust is simply incorrect when it says *Angelastro v. Prudential-Bache Securities, Inc.*, 764 F.2d 939 (3d Cir. 1985), *cert. denied*, 54

U.S.L.W. 327 (Oct. 22, 1985) (No. 85-421), "is obviously distinguishable and thus presents no conflict between circuits." (Resp. Br. at 8) In *Angelastro* a broker misrepresented the credit terms of a margin account, which the Third Circuit held affected the "course of dealing in securities", thus satisfying the "in connection with" and "causation" requirements of §10(b) of the Securities Exchange Act of 1934. 764 F.2d at 943. In this case the Bennetts allege U.S. Trust misrepresented the applicability of the margin rules to public utility stocks, which also affected the "course of dealing in securities." There is no material difference between misrepresenting the credit terms of a margin account and misrepresenting the applicability of the margin rules to the account. Thus, the Second Circuit's ruling that the Bennetts did not satisfy the "in connection with" or "causation" tests is in direct conflict with the Third Circuit's ruling in *Angelastro*. Certiorari should be granted to resolve the conflict because it involves an important issue involving the antifraud provisions of the federal securities laws.

Third, U.S. Trust ignores the Bennetts' argument that if no private right of action is recognized under the margin rules, the rules as a practical matter will be entirely unenforced. (Resp. Br. at 9-12) No lender will have any incentive to comply with the margin rules, and the rules will cease to have any role in regulating the nation's capital markets. Certiorari should be granted so that a private right of action under the margin rules can be recognized, to ensure that the rules be enforced as an integral part of our nation's overall economic regulation scheme.

CONCLUSION

For the reasons stated, this Court should grant the petition for a writ of certiorari to the United States Court of Appeals for the Second Circuit.

Respectfully submitted,

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